

From: [Case 1:14-cv-01150-MV/KK Document 26-1 Filed 02/25/15 Page 1 of 20](#)  
A. Blair Dunn <[abdn@almonlawnm.com](mailto:abdn@almonlawnm.com)>  
Date: February 22, 2015 at 6:49:09 PM MST  
To: 'Ned Shepherd' <[NShepherd@allenlawnm.com](mailto:NShepherd@allenlawnm.com)>, 'Juan Marquez' <[juan@archibequelawfirm.com](mailto:juan@archibequelawfirm.com)>  
Cc: <[alonzo.maestas.esq@gmail.com](mailto:alonzo.maestas.esq@gmail.com)>  
Subject: Vigil v. Taintor Mtn for Leave to Amend and join

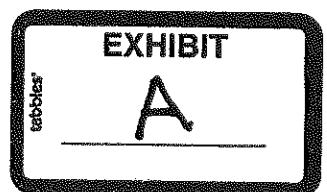
Gentlemen,

Please find attached the draft mtn for leave and the proposed amended complaint. Mr. Shepherd, would your client informally provide the name of the person or company from whom she obtained my client's image so that I may add them to the amended complaint without going through a discovery request?

Please apprise me of your position as to the motion for leave.

Juan, I received your messages, please go ahead and apprise me of what your client said about providing information via email, unless this is something we really need to talk about, things are very busy if need be I can have Alonzo give you a call but my schedule is brutal right now.

Blair



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

VERONICA VIGIL,

Plaintiffs,

v.

**Cause No. 14-1150-MV-KK**

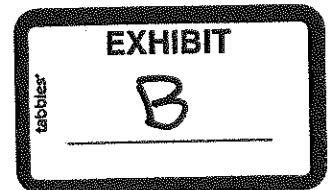
ANNE TAINTOR, ANNE TAINTOR, INC.,  
And DOODLET'S, LLC;

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT AND TO ADD  
OR SUBSTITUTE ADDITIONAL PARTIES DEFENDANT**

COMES NOW Plaintiff, Veronica Vigil, through counsel undersigned, A. Blair Dun, Esq., respectfully move this court pursuant to Rules 15(a) and 20(a) of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 15(a), 20(a)), for leave to serve and file on the defendants an amended complaint and to add certain parties plaintiff. Plaintiffs state as grounds for the motion the following:

1. The original complaint in this case alleges five counts: (1) *prima facie tort*; (2) defamation; (3) presentation to the public in a false light; (4) invasion of right to privacy/right to publicity; and (5) violation of the Unfair Trade Practices Act. *Id.* Plaintiff's Complaint generally alleges that Defendants misappropriated Plaintiff's high school graduation photograph by using the photograph on products with a statement "going to be the most popular girl in rehab." *Id.* ¶ 7. Plaintiff alleges that Defendants and Doodlet's, LLC "sold thousands of products bearing the derogatory use of Plaintiff's image in New Mexico, and across the world." *Id.* ¶ 9. Plaintiff claims emotional damages, loss of privacy, and loss of her reputation.



2. Following the removal to Federal Court by Defendant Anne Taintor, Inc. and following the filing of the Answer by the same Plaintiff undertook to investigate where Anne Taintor, Inc. obtained the Plaintiff's image and where the offending products has been sold locally given the questions presented from (A) Doodlet's, LLC's denial of purchasing or retailing this Anne Taintor, Inc. product; (B) Doodlet's LLC assertion that it was not the same company as the predecessor in name, location, and operations, Doodlet's Ltd.; (C) Defendant Anne Taintor, Inc.'s assertion that it had purchased Plaintiff's image; and (D) Defendant Anne Taintor, Inc.'s failure to deny that it had distributed the product to resident local New Mexico retailers that had sold the offending product causing harm to Plaintiff. Upon investigation Plaintiff has answered those questions by identifying that, upon information and belief, the following companies have sold the offending products, or sold the image to Defendant Anne Taintor proximately causing the misuse of the image:

<<John Doe>>, Picture seller  
Somewhere, NM

Talin Enterprises  
88 LOUISIANA BLVD SE,  
ALBUQUERQUE, NM - 87108

La Montanita Food Cooperative  
901 MENAUL BLVD  
ALBUQUERQUE, NM - 87107

Cost Plus Inc.  
125 LINCOLN AVENUE, SUITE 228  
SANTA FE, NM - 87501

Marcy Street Card Shop  
75 MARCY STREET  
SANTA FE, NM - 8750

Now We're Cooking  
5901 Wyoming Blvd NE  
Albuquerque, NM 87109

3. Doodlet's, Ltd. having now been identified as the predecessor entity that purchased products derived from the misappropriation and misuse of Plaintiff's image and profited from that harm as alleged in the original complaint should either be joined as an additional party or substituted for Doodlet's, LLC.

4. Upon being disclosed by Defendant Anne Taintor as having sold Plaintiff's image, the same being done without the consent of Plaintiff or without any legal authorization to do so, <Jane Doe> is similarly liable for proximately causing the harms to Plaintiff as alleged against Defendant Anne Taintor, Inc. and should be joined in the interests of justice pursuant to F.R.C.P. 20.

5. The facts and circumstances giving rise to the claims against Doodlet's, Ltd., <Jane Doe>, Talin Enterprises, La Montanita Food Cooperative, Cost Plus, Inc, Marcy Street Card Shop, and Now We're Cooking, the new defendants in the proposed amended complaint, are essentially the same as those of the original defendants. Thus, it is alleged that both sets of Defendant were perpetrators or profited from the same misappropriation and misuse of Plaintiff's image to sell products from which the profited.

6. Accordingly, the attached amended complaint seeking relief from the additional defendants (Doodlet's, Ltd., <Jane Doe>, Talin Enterprises, La Montanita Food Cooperative, Cost Plus, Inc, Marcy Street Card Shop, and Now We're Cooking,) as well as for original plaintiffs (Anne Taintor, Anne Taintor, Inc., and Doodlet's, LLC), has been prepared and is offered for filing. Most of the future discovery proceedings will be directly applicable to both sets of defendants.

7. Joinder of all defendants in the proposed amended complaint will reduce duplication of discovery for both sides. In consideration of the large number of witnesses and defendants, the duplication of effort would require major additional expenditures of time and money.

8. It is therefore submitted that the filing of a separate complaint against of the new defendants would serve no useful purposes since a subsequent consolidation of cases for discovery and trial would be clearly indicated as a matter of economy. In the interest of justice and to reduce the burden of litigation to this court and to the parties and to the attorneys, and in view of the fact that the facts and legal theories are strikingly similar and the damage to the Plaintiff is of the same nature and of similar magnitude, Plaintiff submits the attached amended complaint to encompass allegations and demands of Plaintiff against all now ascertained Defendants.

For the above reasons, it is respectfully requested that this court permit plaintiffs leave to file the prepared amended complaint.

Dated this 21st day of February 2015.

Respectfully submitted,

By: /s/ A. Blair Dunn

A. Blair Dunn, Esq.  
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F: 505-881-5356  
[abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)

**Certificate of Service**

I hereby certify that on February 22, 2015 Plaintiff filed through the United States District Court ECF System the foregoing Motion for Remand to be served by CM/ECF electronic filing on the attorneys of record.

/s/ A. Blair Dunn  
A. Blair Dunn, Esq.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

VERONICA VIGIL,

Plaintiff,

v.

Cause No. 14-1150-MV-KK

ANNE TAINTOR,  
ANNE TAINTOR, INC.,  
DOODLET'S, LLC,  
DOODLET'S, LTD,  
<JANE DOE>,  
TALIN ENTERPRISES,  
LA MONTANITA FOOD COOP,  
COST PLUS, INC., and  
NOW WE'RE COOKING,

Defendants.

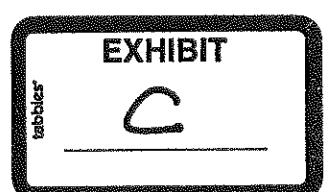
***AMENDED Complaint for Damages for Invasion of Privacy, Prima Facie Tort,  
Defamation, Violation of Unfair Trade Practices Act; Compensatory Damages;  
Punitive Damages; and Injunctive Relief; With Jury Demand***

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COMES NOW, the Plaintiff, by and through their counsel, A. Blair Dunn, Esq., for her Amended Complaint against Defendants does hereby state:

FACTS AND BACKGROUND

1. Plaintiff Veronica Vigil is a resident of Santa Fe County, New Mexico.
2. Defendant Anne Taintor is a resident of New Mexico, residing at her property where she undertook the actions complained of against Plaintiff at the address of 3791 A HWY 96, Youngsville, NM, located in Rio Arriba County, New Mexico.
3. Defendant Anne Taintor, Inc. was a New Mexico corporation registered to do business and doing the business or actions complained of at the address of 3791 A



HWY 96, Youngsville, and 3395 State Hwy 96 Coyote, NM, both located in Rio Arriba County, New Mexico at the time at which alleged injury began to be perpetrated against Plaintiff.

4. Defendant Doodlet's, LLC is a resident New Mexico business located in Santa Fe County New Mexico. Defendant Doodlets is an authorized retailer of Anne Taintor, Inc. that, upon information and belief, has sold products bearing the image of Plaintiff for profit.
5. Defendant Doodlet's, Ltd is a resident New Mexico business located in Santa Fe County New Mexico. Defendant Doodlet's, Ltd. was an authorized retailer of Anne Taintor, Inc. that, upon information and belief, has sold products bearing the image of Plaintiff for profit.
6. Defendant Marcy Street Card Shop is a resident New Mexico business located in Santa Fe County New Mexico. Defendant Marcy Street Card Shop is an authorized retailer of Anne Taintor, Inc. that, upon information and belief, has sold products bearing the image of Plaintiff for profit.
7. Defendant Talin Enterprises is a resident New Mexico business located in Bernalillo County New Mexico. Defendant Talin Enterprises is an authorized retailer of Anne Taintor, Inc. that, upon information and belief, has sold products bearing the image of Plaintiff for profit.
8. Defendant Cost Plus, Inc. is a resident California business located in Santa Fe County and Bernalillo New Mexico. Defendant Cost Plus, Inc. is an authorized retailer of Anne Taintor, Inc. that, upon information and belief, has sold products bearing the image of Plaintiff for profit.

9. Defendant Now We're Cooking is a resident New Mexico business located in Bernalillo County New Mexico. Defendant Now We're Cooking is an authorized retailer of Anne Taintor, Inc. that, upon information and belief, has sold products bearing the image of Plaintiff for profit.
10. Defendant <Jane Doe> is a resident New Mexico business located in Rio Arriba County New Mexico. Defendant <Jane Doe> without permission or authorization sold Plaintiff's image to Defendant Anne Taintor, Inc. for misuse and commercial purposes.
11. Sometime before 2010 Defendant Anne Taintor obtained through unauthorized purchase the picture that was Plaintiff's high school graduation photograph.
12. Defendants never sought nor received permission for possession or use of Plaintiff's image.
13. Sometime before 2010 Defendants altered the photograph, such that it was still the undeniable likeness of Plaintiff, but contained the derogatory statement that Plaintiff was "going to be the most popular girl in rehab" implying that Plaintiff had a problem with illicit drugs and/or alcohol.
14. Plaintiff is an active member of her church and does not consume alcohol or drugs. Given the seriousness of the issues of substance abuse in the community in which Plaintiff resides, she has held herself out by reputation for her children and her community, to refrain from abuse or even use of alcohol and illicit drugs and has set an example that the issue is a very serious one that destroys families and lives, such that it should not be taken lightly.

15. Since 2010, Defendants have sold thousands of products bearing the derogatory use of Plaintiff's image in New Mexico, and across the world. Defendants have profited substantially from the unauthorized and defamatory use of Plaintiff's image.

16. Defendants' actions were the cause of Plaintiffs substantial injury by way of loss of privacy and lost reputation.

17. Upon information and belief Defendants Anne Taintor and Anne Taintor, Inc. willfully misappropriated and misused Plaintiff's image for financial gain in a wanton manner with complete disregard for the fact that they has no authorization or right to do. The willful disregard of a person's right to maintain their wholesome image and of a person's right to privacy against the invasion of misuse of their image for commercial purpose is part of a pattern and practice that violates the New Mexico Unfair Trade Practices act to the detriment of Plaintiff, as well as others who have had their image misappropriated and misused, not to mention that the consuming public that has been enticed into purchasing degrading materials that lack the proper authorizations and permissions from use.

**Count I: PRIMA FACIE TORT**

18. Paragraphs 1 through 11 are incorporated here by reference as if fully set forth,

19. The behaviors and actions described above were made as an intentional failure to conduct reasonable inquiry or seek authorization from this Plaintiff and other individuals for the use of their images and in doing so Defendants caused substantial injury and harm to Plaintiff.

20. Defendant's intentional failure to seek authorization for use of the images before using them for their own financial gain was not justifiable under all the circumstances.
21. Plaintiff's economic, emotional, religious, and reputation injuries were the proximate result of the failure to act by Defendants described above.
22. Defendants are liable to Plaintiffs for compensatory and punitive damages for their intentional failure to act.

**Count II: Defamation**

23. Paragraphs 1 through 16 are incorporated here by reference as if fully set forth.
24. Plaintiff has a legitimate and meaningful business, religious, moral and personal interest in maintaining her reputation and good name.
25. The use of Plaintiff's image has lead others to believe that Plaintiff either has a problem with drugs and alcohol personally, or she condones the use of her image to make light of an important social issue that affects her community. Such use proximately caused Plaintiff to be held up to scorn and contempt.
26. As a proximate result of the unauthorized use of Plaintiff's image described above Plaintiffs reputation was injured irreparably.
27. Defendants are liable to Plaintiff for compensatory and punitive damages for defamation,

**Count III: Presentation to the Public in a False Light**

28. Paragraphs 1 through 21 are incorporated here by reference as if fully set forth.

29. The statements made by Defendants describe Plaintiffs as either an addict or uncaring, a bad member of the community, and a person that would make light of others suffering addiction.
30. The actions by defendants described above were intended to present Plaintiff to the public, and had the inevitable effect of presenting Plaintiffs to the public, in a false light, and Defendants knew or should have known that this would be so, but they did so regardless for their own financial gain.
31. Being so portrayed was highly objectionable to Plaintiff, and has caused great damage.
32. Defendants are liable to Plaintiff for compensatory and punitive damages for holding her out to the public in a false light.

**Count IV: INVASION OF RIGHT TO PRIVACY/RIGHT TO PUBLICITY**

33. Paragraphs 1 through 26 are incorporated here by reference as if fully set forth.
34. Defendants acted to misappropriate and misuse Plaintiff's image in order to sell merchandise with the image of Plaintiff for their own financial gain. Defendants violated Plaintiff's right to privacy in her image and deprived Plaintiff the right to choose to publish her own image in only the manners of which she approved. Defendants did so for financial gain with a wanton and reckless disregard for the rights of Plaintiff.
35. As a direct and proximate result of this invasion of privacy and right to publicity, Plaintiff suffered great economic harm and irreparable injury to her reputation as Plaintiff's image is forever associated with Anne Taintor Inc. and the image

cannot be commercial used for any other purpose without the taint of alcohol or drug use.

36. Defendants are liable to Plaintiff for compensatory and punitive damages for having engaged a commercial enterprise in which they deprived Plaintiff of the profits associated with use of her image and profited from their malfeasance.

**Count V: VIOLATIONS OF THE UNFAIR TRADE PRACTICES ACT**

37. Paragraphs 1 through 30 are incorporated here by reference as if fully set forth.
38. Defendants Anne Taintor and Anne Taintor, Inc. acted to in violation of the Unfair Trade Practices Act, NMSA §57-12-1 *et al.* by in engaging in a pattern and practice of intentionally misleading or making the representation that goods containing the images of many individuals including Plaintiff that were sold by Defendants were the copyrighted or otherwise authorized materials of Defendants when in fact no such sponsorship by the rightful holders was ever obtained.
39. Plaintiff has been damaged by the pattern and practice of the Defendants in violation of the Unfair Trade Practices Act and seeks just compensation pursuant to NMSA §57-12-10.

**Jury Demand**

40. A demand for a 12 person jury is hereby made and such request shall be concurrently made with the Court.

**Prayer For Relief**

Wherefore Plaintiff is entitled to the following relief:

- a. A declaration that Defendants have defamed Plaintiff; have intentionally harmed Plaintiff by failing to seek authorization to use or alter her image; have held Plaintiff up to the public in a false light; have violated Plaintiff's right to privacy as well her right to choose the manner and nature of publication of her image; have violated the New Mexico Unfair Trade Practices Act to the injury of Plaintiff, and that Defendants will continue to do so unless enjoined by this Court;
- b. An order enjoining all defendants from continuing to injure Plaintiff in any manner resembling those alleged in this complaint;
- c. Compensatory damages, punitive damages, attorney's fees and costs as provided by law;
- d. Such other and further relief as the Court deems warranted

Dated this 21st day of February 2015.

Respectfully submitted,

By: /s/ A. Blair Dunn  
A. Blair Dunn, Esq.  
6605 Uptown Blvd NE Ste 280  
Albuquerque, NM 87110  
505-881-5155  
F: 505-881-5356  
[abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)

**Certificate of Service**

I hereby certify that on January 21, 2015 Plaintiff filed through the United States District Court ECF System the foregoing Motion for Remand to be served by CM/ECF electronic filing on the attorneys of record.

/s/ A. Blair Dunn  
A. Blair Dunn, Esq.

**From:** Juan Marquez  
**Sent:** Monday, February 23, 2015 2:12 PM  
**To:** A. Blair Dunn  
**Cc:** alonzo.maestas.esq@gmail.com; Ron Archibeque; Margo Traywick; Alexa Tysseling  
**Subject:** RE: Vigil v. Taintor Mtn for Leave to Amend and join  
**Attachments:** Doodlet's Beginning Inventory-Vendor Schedule 6-21-10.pdf

Blair,

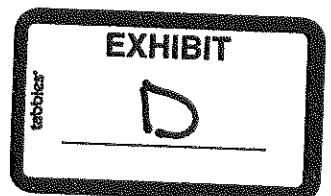
For expedience sake, attached is the Beginning Inventory list from my client which outlines the products that it had after the acquisition of certain assets from Doodlet's, Ltd. on June 21, 2010. As you will see, the document supports my client's affidavits which establish that it did not acquire any products that are the subject of this lawsuit. Accordingly, we request that you revise the Motion to Amend and proposed Amended Complaint to dismiss Doodlet's, LLC from the lawsuit. Once you amend the pleadings, I will let you know our position on them. Thank you.

**Juan M. Marquez, Jr.**  
Associate Attorney  
6709 Academy Road NE, Suite B  
Albuquerque NM 87109  
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**From:** A Blair Dunn, Esq. <abdunn@ablairdunn-esq.com>  
**Sent:** Monday, February 23, 2015 2:23 PM  
**To:** Juan Marquez  
**Cc:** alonzo.maestas.esq@gmail.com; Ron Archibeque; Margo Traywick; Alexa Tysseling; Ned Shepherd  
**Subject:** RE: Vigil v. Taintor Mtn for Leave to Amend and join

Juan I am willing to stipulate to dismissing your client after we are satisfied but I am not altering the amended complaint at this point just tell me whether or not you oppose.

A. BLAIR DUNN, ESQ.  
WARBA, LLP



**From:** Juan Marquez [mailto:[juan@archibequelawfirm.com](mailto:juan@archibequelawfirm.com)]  
**Sent:** Monday, February 23, 2015 10:18 AM  
**To:** A. Blair Dunn  
**Cc:** [alonzo.maestas.esq@gmail.com](mailto:alonzo.maestas.esq@gmail.com); Ron Archibeque; Alexa Tysseling; Margo Traywick  
**Subject:** Re: Vigil v. Taintor Mtn for Leave to Amend and join

Blair,

It's amazing to me that you do not recall me asking you to provide anything that I could show my client which would establish that Plaintiff's claims against it are viable. In any event, and since you again ignored my request in your previous email, please accept this as my second request in this string of emails for the same. Thank you.

***Juan M. Marquez, Jr.***

Associate Attorney

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Albuquerque NM 87109

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**From:** Juan Marquez [mailto:[juan@archibequelawfirm.com](mailto:juan@archibequelawfirm.com)]

**Sent:** Monday, February 23, 2015 9:59 AM

**To:** A. Blair Dunn

**Cc:** [alonzo.maestas.esq@gmail.com](mailto:alonzo.maestas.esq@gmail.com); Ron Archibeque; Margo Traywick; Alexa Tysseling

**Subject:** Re: Vigil v. Taintor Mtn for Leave to Amend and join

We will send over the CA. In the meantime, and pursuant to my previous verbal requests, please provide any and all information or documents that supports your alleged "good faith" basis for keeping my client in this lawsuit. Thank you.

***Juan M. Marquez, Jr.***

Associate Attorney

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**EXHIBIT**

**F**

---

**From:** A. Blair Dunn [mailto:[abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)]  
**Sent:** Monday, February 23, 2015 10:24 AM  
**To:** Juan Marquez  
**Cc:** alonzo.maestas.esq@gmail.com; Ron Archibeque  
**Subject:** RE: Vigil v. Taintor Mtn for Leave to Amend and join

Juan,

Send over the CA, stop wasting your client's time and money and my time. You never made that request. You already have the documentation we discussed. I think your client is lying and you think I don't have a good faith basis, we are going to have to agree to disagree for the time being, so send over your CA and if you think you have the case for sanctions and want use your client's time and money to pursue sanctions, good luck, from a professional sense constantly threatening sanctions is distasteful, but you do what you think you have to do.

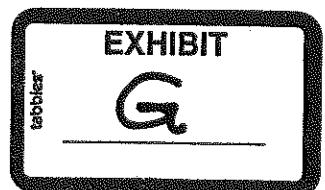
Regards,  
Blair

On Feb 23, 2015, at 10:13 AM, A. Blair Dunn <[abdunn@ablairdunn-esq.com](mailto:abdunn@ablairdunn-esq.com)> wrote:

Juan,

You have made no such verbal request. You requested that I send you a copy of the journal article which you have. Otherwise, I have no idea what request you are talking about. Thank you.

<image003.jpg>



**From:** Ned Shepherd [mailto:[NShepherd@allenlawnm.com](mailto:NShepherd@allenlawnm.com)]

**Sent:** Monday, February 23, 2015 11:56 AM

**To:** A. Blair Dunn; Juan Marquez

**Cc:** [alonzo.maestas.esq@gmail.com](mailto:alonzo.maestas.esq@gmail.com)

**Subject:** RE: Vigil v. Taintor Mtn for Leave to Amend and join

My client does not recall the specifics other than she recalls buying it from someone while in NM, but she had no paperwork or recall of a name.

Ned Shepherd  
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Facsimile: 505.341.3434  
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ALLEN, SHEPHERD,  
LEWIS & SYRA, P.A.  
ATTORNEYS AND COUNSELORS AT LAW

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